IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 4333 of 2005

Date of Decision: 27.08.2007

Jaskaran Singh ...Appellant

Versus

The State of Punjab and others. .. Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. R.S. Rangpuri, Advocate,
for the appellant.

Mr. Piyush Kant Jain, Addl. Advocate General, Punjab,
for the respondents.

S.D. Anand, J.

Concededly, the appellant-plaintiff, a regular Beldar posted in Roads and Bridges Sub Division, PWD (B&R), Muktsar, was convicted for an offence under Section 498-A of the Indian Penal Code (in case FIR No. 27 dated 08.05.1996) on 21.07.1999. On completion of the sentence (including the period undergone by him in custody during trial), he was released on 27.07.1999. He was dismissed from service vide order dated 10.08.2001. The dismissal was to operate w.e.f. 21.07.1999.

A civil suit filed by him to challenge his dismissal from service with retrospective effect was dismissed by the learned Trial Court vide judgment and decree dated 28.02.2004. That judgment and decree was upheld by the learned First Appellate Court vide judgment and decree dated 19.04.2005.

In the present Regular Second Appeal, the only grievance of the

appellant is that his dismissal w.e.f. retrospective date was illegal. In the light of the averments, the following substantial question of law was framed:-

> "Whether, in the circumstances of the case, dismissal of an employee can be ordered with retrospective effect?"

I have heard learned counsel for the parties and have carefully gone through the file.

It is beyond the pale of controversy that the appellant-plaintiff was convicted by the learned Trial Court on 21.07.1999 and the impugned dismissal order came to be passed on 10.08.2001, though the dismissal was ordered to be w.e.f. 21.07.1999. The law on the point was laid down by this Court in Punjab State Electricity Board versus Presiding Officer, Labour Court, Bathinda (1991(2) P.L.R. 591). In the course of that judicial pronouncement, this Court, relied upon a judgment rendered by the Apex Court in R. Jeevaratnam Versus State of Madras (AIR 1966 S.C. 951). No law to the contrary could be cited by the learned State counsel before this Court.

The substantial question of law is answered as under:-

> "An order of dismissal cannot be passed with retrospective effect."

In the light of the response to the substantial question of law, this Regular Second Appeal succeeds and shall stand allowed. The judgment and decree dated 19.04.2005 passed by the learned First Appellate Court shall stand set aside to the extent it upheld the finding of the learned Trial Court upholding the validity of the dismissal with retrospective effect. However, it is made clear that the period after conviction (and till an order

of punishment was passed) would be treated as under suspension and the appellant would be entitled to subsistence allowance according to the rules.

August 27, 2007 (S.D. Anand)
vkd Judge

Note : Whether referred to reporter or not : Yes/No